

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)**

ORVILLE EUGENE BRADFORD,

Plaintiff,

v.

LAWRENCE G. MACDONALD

AND

**JAMES PHILLIPS
D/B/A PHILLIPS SPECIALIZED
HEAVY DUTY HAULING LTD.**

Defendants.

Civil Action No.: _____

NOTICE OF REMOVAL

Defendants Lawrence G. MacDonald (“Defendant MacDonald”) and James Phillips d/b/a Phillips Specialized Heavy Duty Hauling, Ltd. (“Defendant Phillips”) (collectively “Defendants”), by their counsel, Shadonna E. Hale, Steven J. Willner, and Wilson, Elser, Moskowitz, Edelman & Dicker, LLP and pursuant to 28 U.S.C. § 1441, hereby remove this action from the Circuit Court of Maryland for Baltimore County to the United States District Court for the District of Maryland:

1. On November 9, 2018, Plaintiff Orville Eugene Bradford (“Plaintiff”) filed a Complaint against Defendant MacDonald in the Circuit Court of Maryland for Baltimore County, commencing the civil action entitled *Orville Eugene Bradford v. Lawrence G. MacDonald*, Case No. 03-C-18-011288 (“State Action”).

2. The Complaint asserted a single cause of action against Defendant MacDonald for personal injuries allegedly sustained by Plaintiff arising out of a motor vehicle collision on December 7, 2017 involving Plaintiff and Defendant MacDonald. A copy of the Complaint is

attached as **Exhibit 1**. A copy of the Case Information Report filed with the Complaint is attached as **Exhibit 2**. A copy of a Summons issued for service upon Defendant MacDonald is attached as **Exhibit 3**.

3. On April 1, 2019, Plaintiff filed an Amended Complaint, adding Defendant Phillips to the State Action and alleging that Defendant MacDonald was acting as the alleged agent, servant, and/or employee of Defendant Phillips. A copy of the Amended Complaint is attached as **Exhibit 4**. A copy of the Summons issued for service upon Defendant Phillips is attached as **Exhibit 5**. A copy of a re-issued Summons for service upon Defendant MacDonald is attached as **Exhibit 6**.

4. On May 1, 2019, Defendant Phillips was served by personal service with a copy of the Amended Complaint and Summons. A copy of the Affidavit of Service proving service upon Defendant Phillips is attached as **Exhibit 7**.

5. On May 3, 2019, Defendant MacDonald received a copy of the Amended Complaint that was delivered by certified mail to the address of 2203 Strathcona Road – Rte. 312, Forest Hill, Prince Edward Island C0A 2A0. However, a return receipt was not requested or signed by Defendant MacDonald or anyone authorized by him to accept service on his behalf. Accordingly, Defendant MacDonald has not yet been served.¹

6. The United States District Court for the District of Maryland has original diversity jurisdiction over this personal injury action pursuant to 28 U.S.C. § 1332(a) because:

¹ See Md. Rule 2-126(a)(3) (service by certified mail must be made with proof including the original return receipt); See Fed. R. Civ. P. 4(f) (providing that service of process on an individual in a foreign country is proper in accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents); See Hague Convention, 20 U.S.T. 361 at Art. 10(a) (permitting service of process by mail); See *Syncrude Canada Ltd. V. Highland Consulting Group, Inc.*, 916 F. Supp. 2d 620, 627 (D. Md. 2013) (state law on service of process must be satisfied when serving by mail); See also *Randolph v. Henry*, 50 F. Supp. 2d 572, 579 (S.D.W. Va. 1999) (same).

- (a) Plaintiff is a citizen of Maryland, as he is alleged in the Amended Complaint to reside at 203 A Margate Drive, Glen Burnie, Maryland 21060;
- (b) Defendant MacDonald is a citizen of the foreign state of Canada in the province of Prince Edward Island, as he is alleged in the Amended Complaint to reside at 2203 Strathcona Road – Rte. 312, Forest Hill, Prince Edward Island C0A 2A0;
- (c) Defendant Phillips is a citizen of the foreign state of Canada in the province of New Brunswick, as he is alleged in the Amended Complaint to reside at 119 Edinburgh Drive, Moncton, New Brunswick E1E 2K8; and
- (d) Plaintiff claims damages in the Amended Complaint in the amount of \$500,000.

7. Accordingly, the matter in controversy is between a citizen of a State and citizens of a foreign state and the amount of controversy exceeds \$75,000, thus satisfying the diversity jurisdiction criteria set forth in 28 U.S.C. § 1332(a).

8. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(1) because Defendant MacDonald has not yet been served and Defendant Phillips was served less than 30 days prior to the date of this Notice. *See* ¶¶ 4-5 *supra*. Furthermore, there are no other defendants in the State Action and both Defendants join in this removal, satisfying the criterion that all defendants join or consent to removal under 28 U.S.C. § 1446(b)(2).

9. Removal of this action from the Circuit Court of Maryland for Baltimore County to this Honorable Court is, therefore, proper pursuant to 28 U.S.C. §§ 1332(a) and 1441.

10. Pursuant to L.R. 103.5(a), Defendants attach copies of the following documents also filed in the State Action:

- (a) A deficient Request for Summons, attached as **Exhibit 8**;
- (b) A second deficient Request for Summons, attached as **Exhibit 9**;
- (c) An MDEC Deficiency Notice, attached as **Exhibit 10**;
- (d) A second MDEC Deficiency Notice, attached as **Exhibit 11**;
- (e) A proper Request for Summons for Defendant Phillips, attached as **Exhibit 12**; and
- (f) An Entry of Appearance of Counsel on behalf of Defendant Phillips, attached as **Exhibit 13**.

WHEREFORE, Defendants respectfully notice the removal of the State Action from the Circuit Court of Maryland for Baltimore County to the United States District Court for the District of Maryland and respectfully request that the Clerk of this Honorable Court docket this action for all further proceedings.

Respectfully submitted,

**WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER, LLP**

Dated: May 20, 2019

/s/ Shadonna E. Hale
Shadonna E. Hale (Bar No. 08108)
Steven J. Willner (Bar No. 16341)
500 East Pratt Street, Suite 600
Baltimore, Maryland 21202
Telephone: (410) 539-1800
Facsimile: (410) 962-8758
Shadonna.Hale@WilsonElser.com
Steven.Willner@WilsonElser.com
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May 2019 a true copy of the foregoing **Notice of Removal** was served via this Court's ECF/CM filing system and via electronic mail upon:

Michael C. Eisenstein
201 N. Charles Street, Suite 1504
Baltimore, Maryland 21201
Attorney for the Plaintiff

/s/ Steven J. Willner
Steven J. Willner (Bar No. 16341)